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Attorneys for the Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

TERRY HARRINGTON, individually	)	
and in his capacity as the father of	)	
NICOLE ANTOINETTE HARRINGTON,	)	Civil Nos. 4-05-CV-00178-RP-TJS
	)	05-CV-00255
Plaintiff,	)	03-CV-90616
	)	
vs.	)	
	)	
COUNTY OF POTTAWATTAMIE,	)	
IOWA,	)	
CITY OF COUNCIL BLUFFS, IOWA,	)	
DAVID RICHTER, in his individual and	)	<b>PLAINTIFF TERRY</b>
official capacities,	)	<b>HARRINGTON'S RESPONSE TO</b>
JOSEPH HRVOL, in his individual and	)	<b>STATEMENT OF MATERIAL</b>
official capacities,	)	<b>FACTS FOR SUMMARY</b>
DANIEL C. LARSEN, in his individual	)	<b>JUDGMENT BY</b>
and official capacities,	)	<b>POTTAWATTAMIE COUNTY,</b>
LYLE W. BROWN, in his individual and	)	<b>AND PROSECUTORS HRVOL,</b>
and official capacities, and	)	<b>RICHTER, AND WILBER</b>
JOHN DOES ONE THROUGH NINE,	)	
in their individual and official	)	
capacities,	)	
	)	
Defendants.	)	

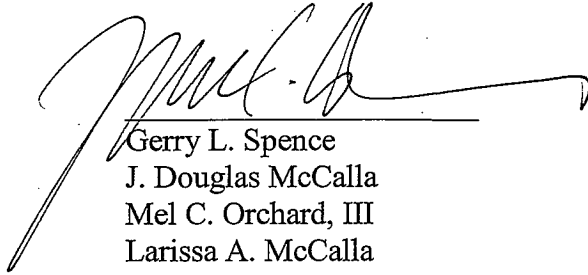
Comes now Plaintiff, Terry Harrington, by and through counsel, and pursuant to Federal Rules of Civil Procedure Rule 56 and Local Rule 56.1(b)(2), submits his

Response to Statement of Material Facts for Summary Judgment by Pottawattamie County, and Prosecutors Hrvol, Richter, and Wilber as follows:

In their four statements about Curtis McGhee, Defendants wholly fail to submit any statement of material fact as to which there is no genuine issue to be tried regarding Plaintiff Terry Harrington. Defendants completely fail to meet their burden under Rule 56, which only allows summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56. Plaintiff Terry Harrington's Statement of Additional Material Facts that Preclude Summary Judgment filed concurrently with this Response clearly states otherwise.

Plaintiff Terry Harrington adopts by reference Plaintiff McGhee's Response to Statement of Material Facts for Summary Judgment by Pottawattamie County and Prosecutors Hrvol, Richter, and Wilber (Docket Number 112). And, in McGhee's response he states that any information that he was with Harrington at 24th and Pratt on the night of the Schweer murder "was not true." *Id.* at 5, ¶ 1. Thus, the *only* tenuous link between the information that Defendants cite as purported support for no genuine issue to be tried *completely* vanishes.

Respectfully submitted this 27th day of October 27, 2006,

A handwritten signature in dark ink, appearing to read "G. L. Spence", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of October, 2006, a true and correct copy of the foregoing RESPONSE was served upon counsel named below via electronic filing.

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